

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 04-cr-30055-MAP
)	
KACEY JONES,)	
Defendant.)	

**GOVERNMENT'S OPPOSITION TO THE DEFENDANT'S REQUEST TO REOPEN
SUPPRESSION HEARING (DKT. # 45)**

The Government respectfully opposes the Defendant's Request to Reopen the Suppression Hearing. The allegations of Officer Trombley's untruthfulness should not disturb this Court's ruling that the evidence was lawfully seized in the above-captioned case since the Court was not obligated to rely solely on Officer Trombley's testimony on any critical issue to the motion.

The three issues before the court at the Defendant's Motion to Suppress Evidence were (1) whether the officers had valid consent to enter William Cubi's ("Cubi") apartment at 49 School Street; (2) whether the officers' protective sweep was justified by the report of a man with a firearm who was dealing drugs; and, (3) whether the firearm and crack cocaine were recovered in plain view. This Court should deny the Defendant's motion to reopen the hearing based on the credible testimony of Officer Sedergren and Officer Ganley.

The testimony of both Ganley and Sedergren establish the basis for the entry into the apartment and the ensuing protective sweep. Specifically, both Ganley and Sedergren testified they were dispatched to respond to a man with a firearm who was

dealing drugs, and who posed a danger to the occupants of an apartment at 49 School Street.¹ (Tr. 10-11; 36). The dispatch was based on a 911 call, and a printout of the message the officers viewed was introduced in evidence as Exhibit # 3.² (Tr. 36).

When Ganley and Sedergren arrived at the apartment they were greeted by William Cubi after they knocked on the back door. Both officers testified that Cubi invited them to enter the apartment. (Tr. 13, 40). Once the officers entered the apartment they began a protective sweep. Sedergren testified he followed Officer Trombley into the bathroom after he heard Trombley yell, "Drop the knife!" (Tr. 42). Sedergren testified he then observed the defendant sitting on the toilet with a knife in his hand. (Tr. 43). Moments later Sedergren observed a firearm and crack cocaine in plain view within the Defendant's reach. (Tr. 43-44). The respective accounts of both Ganley and Sedergren provided the Court with a sound basis to deny the Defendant's Motion to Suppress.

Trombley's testimony is cumulative, and unnecessary for the Court to consider when ruling on the Defendant's Motion to Suppress. Accordingly, the government respectfully requests this court to deny the defendant's request to reopen the hearing.

¹A transcript of the October 20, 2005 hearing on the Motion to Suppress was prepared and made available to both parties and the Court.

²The document marked "Exhibit 3" is attached as "Exhibit A."

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Paul Hart Smyth

Paul Hart Smyth
Assistant U.S. Attorney

FS REPORT

ATE: Mon Apr 19 09:09:50 2004

ONE: AREA E2-1

FS NUMBER: 032204-59

DATE/TIME RECD: 03/22/04 06:41:21

DATE/TIME SENT: 03/22/04 06:46:13

DATE/TIME CMPL: 03/22/04 07:25:09

NC CODE: IASST

NC CODE DESC: IMMEDIATE ASSISTANCE

INAL DISP: ARR

DDRESS: 49 SCHOOL ST

APT:

CITY:

PHONE:

OMP NAME: WILLIAM CUBI ADDR:

PHONE:

N PROG: PRI: 1 WEAPON:

ALARM:

PRI UNIT: 1E1

ALLTAKER: WYSZYR

DISPATCHER: MPOSHE

NITS ATTACHED: 1E1, 1F2

PERSONS:

YPE:

AM: JONES, KACEY

SOC:

SEX:

OB: 082880 AGE:

HGT:

WGT:

AI: EYE:

CMPLX:

OLN:

RMED AND DANGEROUS:

SW:

ISC:

OMMENTS:

WYSZYR 06:41:21

ADDRESS CHANGED TO 49 SCHOOL ST AT 06:41

WYSZYR 06:52:32

1 OF 2 C BLK MALE WITH A GUN IN APT. 3-FL RIGHT, WEARING BLUE JEANS, SILK TYPE JACKET, 200 POUNDS WITH A BLACK HOODIE UNDERNEAT THE JACKET IS SITTING IN THE COMP. LIVINGROOM AND WANTS HIM REMOVED, THIS IS CALLED IN FROM A THIRD PARTY WHO SAYS MR. CUBI

WYSZYR 06:52:32

2 OF 2 LIVES THERE AND THIS BLK MALE IS DEALING THERE TOO, AND MR CUBI DOSEN,T WANT HIM BUT IS TI SCARED TO ASK HIM TO LEAVE SO A 3 RD PARTY CALLED US... THE BLK MALE HAS A GUN IN HIS WAISTBAND.....

BLJOFFE 07:20:37

78.4 ONE TO 130 PEARL

BLJOFFE 07:21:55

78.8 END TRANS

[CFSD] 07:21:58

HIT REQUEST RETURNED FOR: 1E1 @ 49 SCHOOL ST LAT/LON: 42.10369

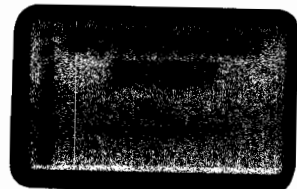
72.58088. SUMMARY: ANNOUNCE/ALARM LEAPS WARRANT HIT ON JONES, KACEY

[CFSD] 07:22:00

SP8:BLJOFFE ACKNOWLEDGED HIT RETURN FOR UNIT 1E1

INIT ACTIVITY ASSOCIATED WITH CALL:

INIT	SUB-UNIT	STATUS	TIME
1E1	TROMBLEYM	DISP	06:56:08



COLLINSS	ARRIVED	07:25:02
	INSERV	07:25:05
GANLEYE	DISP	06:57:52
SEDERGREN	ARRIVED	07:25:07
	INSERV	07:25:08

F2
